IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.585/2001

Reserved on.20.4.2007

Decided on.11.6.2007

HPSEB and another **…Petitioners.**

Versus

Roshan Lal and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : **Mr.Shrawan Dogra, Advocate**

For the respondent No.1. **Mr. Anil Chauhan, Advocate.**

For the respondent No.2 **Mr. J.K. Verma, Dy. Advocate General.**

Rajiv Sharma, J.

This petition arises out of award dated 19.3.2001 passed by the learned Presiding Judge, H.P. Labour Court, Shimla.

The Government had made a reference to the Labour Court pursuant to which the workman had filed statement of claim before the learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla. The case set out by the workman in the statement of claim was that he was appointed on daily wages as Beldar with effect from 7th September, 1989 and he continuously discharged his duties up to 20th September, 1990. He was retrenched by the Board on 21st September, 1990 without complying with the mandatory provisions of section 25-F & N of the Industrial Disputes Act, 1947. The employer had filed the reply to the statement of claim and denied that the workman had completed 240 days

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

preceding his retrenchment. The employer was proceeded exparte during the hearing before the Labour Court Shimla. The workman had appeared before the Labour Court and categorically stated that he had completed 240 days preceding his retrenchment effected with effect 21st September, 1990. The learned Labour Court had accepted the version of the workman with regard to completion of 240 days. The learned Labour Court had answered the reference in affirmative by holding that the termination of the workman was illegal and he was held entitled to re-engagement with full back seniority but without back wages.

Mr. Shrawan Dogra, advocate appearing on behalf of the petitioners has strenuously argued that it was not a case of retrenchment and in fact the workman had abandoned his job with effect from 21st September, 1990.

Mr. Anil Chauhan, Advocate appearing on behalf of the workman has submitted that the workman had completed 240 days before his retrenchment and the employer has not placed any material on record to substantiate his plea that the workman had abandoned the job.

I have heard the parties and perused the record.

The learned Labour Court on the basis of the statement made by the workman and Shri Brij Lal had categorically come to the conclusion that the workman had completed 240 days preceding his retrenchment. The workman was engaged on 7th September, 1989 and he worked uninterruptedly up till 20th September, 1990. In view of this the workman had been rightly held entitled to the protection of section 25-F of the Industrial Disputes Act, 1947.

The plea of delay and laches in raising the dispute has also been considered by the learned Labour Court and it was only on the basis of delay in raising the dispute that the workman has not been held entitled

to back wages while holding his retrenchment as illegal. The plea of abandonment has not been substantiated in any manner by the petitioners-Board. The plea of abandonment is based on fact and the same is to be proved in accordance with law.

Accordingly there is no merit in the petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

June 11, 2007
Awasthi